

The claims in this case are rejected, under Section 103(a), over the combination of Zollinger in view of Ziegler or Myers and Munford. For a full expression of the basis for this rejection, it is necessary to return to the Official Action dated September 14, 1998. There the examiner urges that:

Zollinger *et al.* teach the use of detoxified LPS obtained from *Escherichia coli*, non-covalently complexed with OMP of group B *Neisseria meningitidis* as a vaccine against infection...

Ziegler *et al.* teach a purified LPS of *E. coli* J5 and its role as an effective immunogen.

Myers *et al.* teach that "the core region is highly conserved among LPSs obtained from different genera of *Enterobacteriaceae* and that immunity against the core region is...protective against a wide variety of Gram negative bacterial challenges" and was "demonstrated by the work of Ziegler *et al.*...

Munford *et al.* teach that "the structure of the lipid A moiety is highly conserved' in the LPS of many pathogenic bacteria...that LPSs may be used as vaccines to prevent gram negative bacterial sepsis by producing antibodies to R-core regions....[and that] the structure of the R core region of LPS "is similar in most gram negative bacteria"...

With this perspective, the examiner concludes that:

It would have been obvious to one skilled in the art at the time the invention was made to substitute Zollinger's generic *Escherichia coli* LPS with its O-specific side chains intact, with Ziegler's or Myers' specific *E. coli* J5 LPS which is devoid of O-specific side chains, to produce the instant invention because, Ziegler *et al.* teach that O-specific side chains present in the LPS of parent *E. coli* strain 'conceals' the protective core determinants whereas *E. coli* LPS devoid of O-specific side chains has this protective core determinant exposed (and thus available for recognition by the host immune system). One skilled in the art would be motivated to produce the instant invention for the expected benefit of using an immunogen that elicits protective response against multiple pathogenic bacterial species in addition to *E. coli* (for example *S. typhimurium* and the meningococcus) because the exposed/unblocked conserved antigenic determinants that this immunogen presents to the host immune system as taught by Ziegler *et al.* or Myers *et al.* or Munford *et al.* One skilled in the art would have had a reasonable expectation of success in obtaining the vaccine of the instant invention since Ziegler's purified *E. coli* J5 LPS would be expected to function no

differently than Zollinger's generic *E. coli* LPS when complexed with meningococcal outer membrane protein.

The most recent action expands on the examiner's rationale for combining OMP from *N. meningitidis* and J5 LPS from the *E. coli* J5 strain. In particular, she urges that the skilled practitioner would have been motivated "to substitute Zollinger's generic *E. coli* LPS with Zeigler's specific J5 LPS to produce the instant composition and vaccine for the expected benefit of economically and advantageously immunizing a subject against heterologous Gram negative bacterial sepsis with a single, all-in-one composition, with a reasonable expectation of success in using such a composition in active or passive immunizations against Gram negative bacterial sepsis."

As requested at the February 14th interview, applicants file the present response to provide a "road map" to the issues in this case. As elaborated below, the examiner has misapplied the primary reference, because it is not true that "Zollinger et al. teach the use of detoxified LPS from *Escherichia coli*, non-covalently complexed with OMP of group B *Neisseria meningitidis*, as a vaccine against infection." Even if this were the essence of Zollinger, moreover, one skilled in the art would not have been motivated, by "the expected benefit of using an immunogen that elicits protective response against multiple pathogenic bacterial species," to substitute J5 LPS of Ziegler in Zollinger's complex, and there would have been "no reasonable expectation of success in using such a composition in active or passive immunizations against Gram negative bacterial sepsis." Moreover, the examiner has relied on teachings from Munford and Myers, to the effect that the structure of the R core region of LPS "is similar in most gram negative bacteria," despite applicants' demonstration that these teachings were debunked in the art when the present application was filed. The fact remains that, notwithstanding the widespread belief that J5 LPS is not an effective immunogen, applicants and have succeeded in providing the key to unlock J5 LPS's latent immunogenicity.

It is not true that "Zollinger et al. teach the use of detoxified LPS from *Escherichia coli*, non-covalently complexed with OMP of group B *Neisseria meningitidis*, as a vaccine against infection"

Zollinger discloses a "process for preparing a detoxified polysaccharide-outer membrane protein complex from bacterial envelopes. The so-obtained products which are useful against infection by the *same* bacteria" (abstract, emphasis added). The *purpose* of the polysaccharide in Zollinger, whether capsular polysaccharide or lipopolysaccharide, is to solubilize the outer membrane proteins.

Thus, Zollinger speaks of "outer membrane proteins...solubilized by the tetravalent mixture of A, C, Y, and W135 polysaccharides" (col. 2, lines 7-9). He also states that "the detoxified [lipopolysaccharide] was shown to retain its ability to bind to and *solubilize* outer membrane proteins" (col. 8, lines 66-68), and that "sonication is often essential to facilitate the protein-lipopolysaccharide interaction and *solubilize* the protein" (col. 9, lines 13-15; emphasis added in each case). For the purpose of solubilization, either detoxified lipopolysaccharide or capsular polysaccharide can be used. Zollinger teaches that the process in question is applicable generally to the preparation of detoxified polysaccharide-protein complexes derived from gram-negative bacteria, preferably *Neisseria meningitidis* group B, *Haemophilus influenzae* type b, *N. gonorrhoeae*, *Escherichia coli*, and *Pseudomonas aeruginosa*.

From the foregoing, it is apparent that examiner has applied Zollinger in a selective manner, picking OMP from one species (*N. meningitidis*) and detoxified LPS from another (*E. coli*). *This mixing and matching is not suggested by Zollinger, however.*

Indeed, Zollinger's only specific examples, one with capsular polysaccharide and another with detoxified lipopolysaccharide, entail the use of OMP from the *same species* as the polysaccharide. In his Example 1, outer membrane protein from *N. meningitidis* is complexed with capsular polysaccharides from serogroups A, C, Y, and W-135 of *N. meningitidis*. In Example 3, outer membrane protein from *N. meningitidis* is complexed with detoxified lipopolysaccharide from a serogroup B case of *N. meningitidis*.

The use of outer membrane protein and polysaccharide from the *same species* is consistent with another Zollinger teaching, that the vaccine is directed against the same species from which the OMP is obtained. If the polysaccharide is to fulfill any purpose in addition to the solubilization function taught by Zollinger, the clear indication in the reference is that it serve to strengthen the antigenic response to the OMP. This would best be achieved by using polysaccharide from the same species as the OMP. X^{NO}

Accordingly, the allegation that Zollinger teaches a combination of OMP from *N. meningitidis* and LPS from *E. coli* is a hindsight reconstruction of the art and, hence, should be withdrawn. Such an *N. meningitidis/E. coli* combination not only falls outside the ambit of Zollinger's teachings but also is contrary to Zollinger's express purpose.

One skilled in the art would not have been motivated, by "the expected benefit of using an immunogen that elicits protective response against multiple pathogenic bacterial species," to substitute J5 LPS of Ziegler in Zollinger's complex, and there would have been "no reasonable expectation of success in using such a composition in active or passive immunizations against Gram negative bacterial sepsis"

It is the PTO's burden to find, within the cited art, evidence of motivation for the skilled artisan to have complexed LPS from the J5 strain, instead of detoxified LPS or capsular polysaccharide from other strains, with an outer membrane protein from *N. meningitidis*. Casting about for such evidence, the examiner argues that the J5 LPS would serve "as an immunogen to treat sepsis caused by multiple gram negative bacterial pathogens" based on Ziegler *et al.*

At the February 14th interview, however, Dr. Cross explained that all previous attempts to immunize or otherwise protect individuals against LPS endotoxin-mediated pathology had been unsuccessful. There is perhaps no better substantiation of this statement than a review article by Greisman and Johnston, published in 1997. Entitled "Evidence against the hypothesis that antibodies to the inner core of lipopolysaccharides in antisera raised by immunization with enterobacterial deep-rough mutants confer broad-

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spectrum protection during Gram-negative bacterial sepsis," the Greisman/Johnston article is much more recent than any of the art cited by the examiner, and is appended as Exhibit 1. Moreover, Dr. Greisman is a well-respected expert in this field and has received Honorary Lifetime Membership in the International Endotoxin Society, the highest award bestowed by that organization upon investigators involved in endotoxin research.

Included among the articles reviewed by Dr. Greisman is Ziegler *et al.*, *New England J. Med.* (1982), the only reference, presently recited, that relates to LPS from J5 mutants. The Greisman article also considers many of the prior-art attempts to achieve protection with antisera to LPS from J5 mutants. As to each and every study implicating broad-spectrum protection by rough-mutant antisera, Dr. Greisman concluded that defects, in design or methodology, had engendered inconsistent results, and that antisera to the J5 chemotype "do not appear capable of providing broad-spectrum protection."

See
Applicant's
own early
publications

The Ziegler article, cited by the examiner against the present claims, is discussed in the last paragraph on page 126 of Greisman *et al.* Greisman notes Ziegler's report of broad-spectrum protection with antisera to J5 rough mutants. In view of Ziegler's results, Dr. Greisman reevaluated the putative anti-LPS effect of rough mutant antisera, but first screened the antisera to preclude polyclonal increments in O-specific antibodies to the challenge LPS, and used pre-immune sera from the respective donors as controls.¹ When these steps were taken, Dr. Greisman found that rabbit antisera to J5 mutant, which possessed titers of antibody to the respective LPS core determinants comparable to or higher than those used by investigators who reported broad-spectrum protection against LPS, nevertheless failed to protect mice against lethality produced by LPS from heterologous smooth enterobacteria or even from the homologous smooth parental strain. According to Dr. Greisman, these results "failed to support the hypothesis that antisera to

¹ Appended as Exhibit 3 are copies of the following articles by Dr. Greisman, relating to this reevaluation:

"Failure of Antisera to J5 and R595 Rough Mutants to Reduce Endotoxemic Lethality," *J. Inf. Dis.* 157:54-63 (1988), and

"Experimental Gram-Negative Bacterial Sepsis: Reevaluation of the Ability of Rough Mutant Antisera to Protect Mice," *Proc. Soc. Exp. Biol. Med.* 158:482-490 (1978).

J5 and R595 are capable of effective broad-spectrum neutralization of the lethal activity of S-form LPS." *Id.* at page 127.

Sec.
Appl. court
publications

Dr. Greisman's conclusion regarding Ziegler's study was shared by others in the field. Indeed, Ziegler herself was unable to identify antibodies as a basis for the protection observed ("we could not relate protection to the J5 antibody titer, regardless of the immune status of the donor" – page 1228, last paragraph). Zanetti *et al.* (of record) stated that, "as was noted in the report by Ziegler *et al.*, protection was related to immune plasma, not to specific levels of antibody to core LPS in a given plasma" (first paragraph on page 988) and, "as already noted, in both successful clinical studies with *E. coli* J5 antiserum, the protection remained of unclear origin because outcome could not be convincingly correlated with the level of antibodies to the core LPS of *E. coli* J5...the protection afforded by *E. coli* J5 antiserum could not be attributable to antibodies to the LPS of *E. coli* J5" (second full paragraph on page 988). Similarly, Glauser *et al.* (of record) noted that "a favorable outcome could not be correlated with antibody titers in either of the two clinical studies done with human polyclonal antisera to J5...the mechanisms of protection by antisera to J5 remain unknown" (second full paragraph on page S208). Baumgartner opined that "the successful studies did not discover the factor responsible for the postulated crossprotection in J5 antiserum, because the protection could not be attributed to anti-J5 LPS, anti-Re LPS, or anti-lipid A antibodies" (top of page 923).

Taken out of
context.
only in controls

In subsequent clinical trials, use of an anti-J5 LPS monoclonal antibody, rather than polyclonal antiserum from donors, fared no better in providing protection. Results of these trials are appended as Exhibit 2.

W/proof of
no eff.

In the first of these, a trial by Ziegler *et al.* which was reported in the *New England Journal of Medicine* in 1991, the mortality rate among all patients with sepsis was 43 percent among recipients of placebo and 39 percent among those given HA-1A. Ziegler concluded that this result is similar to that obtained in their earlier trial with polyclonal antiserum. Two trials with HA-1A that were conducted by other researchers, however, produced different results. A trial reported by McCloskey *et al.* in 1994 in the *Annals of*

Lipid A
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Internal Medicine concluded that "HA-1A was not effective in reducing the 14-day mortality rate in patients with gram-negative bacteremia and septic shock." A trial in children with meningococcal septic shock, as reported by Derks *et al.* in a 1999 issue of *Clinical Infectious Diseases*, concluded that "no significant benefit of HA-1A could be demonstrated."

HA-1A is
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Dr. Greisman reviews results in five other clinical trials, in a declaration appended to this response as Exhibit 4. In his declaration, Dr. Greisman attests to failures of five clinical trials to show broad-spectrum protection during Gram-negative bacterial sepsis.² All of these trials were subsequent to Ziegler's clinical study of polyclonal antiserum, reported in 1982 and cited now by the examiner.

In the first negative trial, performed by Braude and Ziegler's group, pre- and post-immune J5 antisera were given prophylactically to patients with neutropenia. The results, however, evidenced no differences in the rates of Gram-negative bacteremia, febrile episodes or mortality. In the second clinical study, a gamma globulin fraction from donors with elevated antibody titers to J5 LPS proved ineffective. In a third trial, an IgG fraction from sera of volunteers immunized with the J5 mutant provided no more protection against mortality than the IgG fraction from standard plasma pools, and did not reduce the number systemic complications of shock and did not delay the occurrence of death from systemic shock. A fourth clinical trial, in which infusions of human immunoglobulin preparations selected for their high content of IgG to R595 LPS, failed to show any greater protection against subsequent Gram-negative bacterial infections or their systemic complications in patients at high risk after major surgical procedures than was achieved with comparable immunoglobulin preparations containing on average 7-fold lower amounts of anti-R595 IgG. Finally, in a fifth clinical trial, 73 children with severe infectious purpura, the majority secondary to *N. meningitidis*, received J5 immune or pre-immune plasma. The anti-J5 plasma did not affect the clinical course, or the rate of decrease of TNF α or IL-6 or mortality.

² Copies of articles relating to each of these five clinical trials are appended to this response as Exhibit 5.

In both his declaration and his review article, Dr. Greisman documents other attempts to demonstrate the protective capacity of J5 antisera in the laboratory. Many of the articles reviewed in Greisman *et al.* are the very ones listed by the examiner as showing the state of the art, including work by McCabe, Dunn, Young, Braude, Davis, Cryz, Di Padova, Nelles, Lugowski, and Salles. These articles have not been cited against the claims, and applicants will not discuss the flaws in each of them; to do so would risk obscuring the forest for the trees, in this "road map" response. Rather, applicants rely on the considerable expertise of Dr. Greisman in thoroughly reviewing the state of the art in this field, *circa* 1997. Dr. Greisman's review reveals the flaws in each of these studies, which led to divergent results, and after his thorough review Dr. Greisman still believes that an anti-endotoxin vaccine for effective broad spectrum therapy of sepsis is unlikely to be developed.

Ignored by Applicants

Contradicts Applicant's own admission

Indeed, Dr. Greisman is not alone in his opinion. In March Dr. Cross attended a worldwide conference on sepsis in Europe. Over 1,000 papers were presented, yet only two dealt with antibodies against endotoxin, one by Dr. Cross and one on the WN1 monoclonal of Sandoz. Dr. Dunn, whose work in hyperimmunizing horses was included in the "state of the art" referenced by the examiner, was present. He was, however, silent on the possibility of an LPS vaccine.

Note

In short, Dr. Greisman's article and declaration, as well as the other information discussed in this section effectively rebut the contention that a skilled artisan would reasonably have expected J5 LPS to act as an effective immunogen in a vaccine preparation to elicit a protective response against multiple pathogenic bacterial species, and more particularly against sepsis. Since antibody induced in response to J5 LPS alone does not provide effective protection against sepsis, the argument that it would have been obvious to complex LPS from a J5 strain with OMP from *N. meningitidis* instead of LPS from *N. meningitidis* "as an immunogen to treat sepsis" is totally without basis.

Does Applicant's argument show?

Applicants also have provided evidence that teachings from Munford and Myers, to the effect that the structure of the R core region of LPS "is similar in most gram negative bacteria," were debunked in the art when the present application was filed

Myers is cited by the examiner as teaching that the core region is highly conserved. This fact has long been known. While there are highly conserved epitopes in the LPS core, however, others have shown that there exists a microheterogeneity in these epitopes. See, for example, Table 1 in the manuscript "Vaccines and Antibodies in the Prevention and Treatment of Sepsis" and Figure 11 of Lugowski (of record). In studies by Lugowski *et al.* (1996), in which core LPS from *E. coli* was used as a vaccine, there was no binding to *Klebsiella* (applicants' J5 LPS/OMP vaccine does bind to *Klebsiella*; see below). Moreover, there was little cross reaction between antiserum raised against the core LPS of J5 and other cores from *E. coli*, including the prototype core R3 to which J5 *E. coli* belongs! Thus, even within *E. coli*, there are significant differences between core epitopes.

See
Tyler et al.
Tomita et al.
Salles et al.
Welles et al.
Tomita 1994
1995

Di Padova (of record) similarly suggests a conserved core region by disclosing that a monoclonal antibody binds to the 5 known cores of *E. coli* and to *Salmonella* core. Di Padova and colleagues generated their core LPS-specific monoclonal antibody by sequential immunization of animals with different LPS core structures. Even when animals were immunized with a variety of LPS core structures, however, the resulting monoclonal antibody had no activity against *Klebsiella* or *Pseudomonas*. (Applicants' J5 LPS/OMP vaccine does bind to *P. aeruginosa* and *Klebsiella*, as shown in the declaration submitted by Dr. Cross.)

In a more recent editorial, published in 1992 and appended as Exhibit 6, Munford and colleagues state the premise on which Ziegler's trial was based, *i.e.*, that the highly-conserved core region generates protective antibodies and is an effective immunogen, "remains unproved and unclear." In particular, they note that the results obtained in the preclinical studies of Ziegler antibody HA-1A were "substantially different from those more recently described." In addition, they cited information obtained under the Freedom of Information Act that "there is no experimental model in which HA-1A has consistently protected animals from endotoxic challenge." Open Meeting of the Vaccines and Related

Biological Products Advisory Committee (September 4, 1991), Volume 1, Bethesda, Md.: FDA, 1991:50. Thus, subsequent to his patent filed in 1986, Munford found reason to suspect the premise that the highly conserved core region elicits effective protection.

Finally, Myers attaches significance to the core region *based on the results obtained by Ziegler in her cited 1982 article*, to wit: “...*the core region is highly conserved among LPSs obtained from different genera of Enterobacteriaceae; immunity against the core region is therefore protective against a wide variety of gram negative bacterial challenges. This was demonstrated by the work of Ziegler et al.*” (emphasis added). However, as explained in detail above, Ziegler’s results were not due to antibodies against the core region. Ziegler herself was unable to correlate protection with J5 antibody titer, and many others of skill in the art have commented on this point. Accordingly, Myers’ teaching adds nothing to that of Ziegler, based as it is on the faulty conclusion that Ziegler showed immunity against the core region.

In sum, the inferences drawn by the examiner based on teachings in Myers and Munford can be effectively rebutted. The teaching that the core region of LPS is conserved, in light of subsequent teachings highlighted above, would not have led a skilled artisan to conclude that the core region might provide the basis for protection against sepsis.

In spite of the widespread belief that J5 LPS is not an effective immunogen, applicants persisted and have succeeded in providing the key to unlock J5 LPS’s latent immunogenicity

Yet applicants have succeeded where others have failed. They have done so by complexing the J5 LPS with OMP of *N. meningitidis*. This complexation with the OMP of *N. meningitidis* appears to maintain J5 LPS in a proper spatial configuration such that relevant cross-reactive epitopes in the J5 LPS core are exposed in a manner that they are not when simply conjugated to protein or given alone. A key aspect of applicants’ vaccine is reflected in their demonstration that LPS of *E. coli* J5 (Rc chemotype) - the highly

conserved core of endotoxin - can produce antibodies that provide protection against the biologic activities of heterologous LPS.

Proof that a vaccine of the present invention indeed is effective, in improving the outcome following a subsequent challenge with heterologous bacteria, is manifest in the data provided in Dr. Cross's declaration of January 12, 1999. That is, the Cross declaration documents studies of challenge with virulent strains of heterologous bacteria following active immunization with J5 LPS/OMP.

As described in the protocol appended to the declaration, rats rendered neutropenic with cyclophosphamide were immunized, either with de-O-acylated J5 LPS ("dLPS") complexed to OMP or with saline, in a 3-dose regimen prior to challenge with the heterologous bacteria. Levels of antibody titer for rats immunized with the J5 dLPS/OMP exceeded a target level of 800 ELISA units/ml of antibody, a level previously shown to be protective in passive protection experiments. Following immunization, the rats were challenged with either *Pseudomonas aeruginosa* or *Klebsiella pneumoniae*, in a dose which exceeded LD₉₀ for this experimental model in previous studies.

The results showed that active immunization with J5 dLPS/OMP vaccine produced a prompt and sustained anti-core glycolipid antibody level that was generally in 100-fold excess of pre-immunization baseline levels. Twenty-four hours after bacteremia, antibody levels decreased, but then rapidly recovered to, and remained at, pre-infection levels. Active immunization with J5 LPS/OMP vaccine induced greater than 800 ELISA units/ml of antibody at the onset of neutropenia, nearly 4 weeks after the last dose of vaccine, and this level persisted throughout the entire period of neutropenia, for up to 80 days after the initial immunization. *This is in distinct contrast to results achieved by passive immunization with antibodies, where initial levels of 800 ELISA units/ml of antibody dropped to less than 200 ELISA units/ml of antibody by 24 hours.* Thus, while levels of antibody produced in response to J5 LPS alone dropped to less than 200 ELISA units/ml of antibody by *24 hours*, levels of 800 ELISA units/ml induced by immunization with LPS

complexed with OMP from *N. meningitidis* are sustained for **80 days** after immunization. This is clearly an unexpected result.

Immunization with J5 LPS/*N. meningitidis* OMP did not prevent either systemic infection or initiation of sepsis, but it clearly reduced the likelihood of a lethal outcome following infections with both heterologous strains of bacteria. Vaccinated animals challenged with *Pseudomonas* had an overall survival rate of 48% compared to 7% for saline treated control animals. A similar result ensued with *Klebsiella* challenge, with a 64% survival rate for vaccinated animals versus a 13% survival rate for control animals.

One particularly surprising result was the effect of the vaccine on organ colonization by the bacteria. Vaccinated animals had the same frequency and magnitude of bacteremia from the challenge strain as the control group, but had significantly lower levels of bacteria in liver and spleen than control animals.

In addition to the decreased bacterial colonization in liver and spleen, there was a significantly lower level of circulating endotoxin at the onset of fever in vaccinated animals as compared to control animals. While endotoxin levels increased in both groups at 24 hours, they were still lower than those of the control group. The lower level of circulating endotoxin may be due in part to promotion of LPS clearance from the circulation.

Antibodies produced in response to vaccination with applicants' vaccine do not appear to promote killing of bacteria, either directly or indirectly. They prevent neither systemic infection nor initiation of sepsis. They do, however, significantly reduce the likelihood of a lethal outcome following infections with both heterologous strains of bacteria. Dr. Cross hypothesizes that antibodies generated in response to the vaccine promote the uptake and killing of bacteria from the blood by tissue.

Inexplicably, the examiner has given short shrift to these data. In an Official Action that is 21 pages long, the examiner devotes only six sentences to the issue of applicants' declaration. On page 10 of the Action, the examiner comments that

Applicants submit a further declaration from Dr. Cross which provides results of challenge studies with heterologous bacteria. While the information in the declaration supports that provided in the specification, it does not overcome the rejection of instant claims under 35 U.S.C. 103(a).

No support for this statement is given in context. Much later, however, in the paragraph bridging pages 14 and 15 of the Action, the examiner explains that

The data provided with Dr. Cross's declaration shows that administration of a vaccine-derived antiserum to animals results in 48% survival of animals against challenge with *Pseudomonas* and 64% survival against challenge with *Klebsiella*. However, 52% and 36% of immunized or treated animals respectively were not "protected." The full scope of the claims is not commensurate with the scope of the enabling disclosure and undue experimentation would be required by one of ordinary skill in the art to reproducibly practice the invention as claimed. The enablement (scope) provisions of 35 U.S.C. §112, first paragraph, are not met and the claim is viewed as non-enabled with respect to its scope.

This "scope" issue, raised in connection with the declaration, is neither advanced or elaborated in the balance of the Action. The only "scope" rejection propounded in the Action relates to claim 19, which was directed to passive, not active, protection. This point was discussed at the interview, and applicants understood Examiner Housel to agree that the scope of the claims was commensurate with both the disclosure and the scope of the showing. More particularly, the undersigned explained at the interview that claim 1, applicants' broadest vaccine claim, recites "a vaccine, effective in actively immunizing a subject against infection by heterologous Gram-negative bacteria or against lipopolysaccharide (LPS) endotoxin-mediated pathology by the production of an antibody, comprising a non-covalent complex between (i) purified, detoxified LPS endotoxin derived from *E. coli* J5 strain and (ii) a purified outer membrane protein (OMP) derived from *N. meningitidis*." Thus, the broad claim specifically recites both the immunogen and the immunocarrier, as well as the fact that they form a non-covalent complex. The specification clearly describes how to make and use this vaccine, and the data in Dr. Cross's declaration uses this same vaccine and shows positive results. Based on this, it is believed that no issue of scope remains following the interview.

The examiner's comments regarding the percentage of subjects that were protected, 48% and 64%, respectively, are not understood. There are other vaccines in common use that provide significantly less than 100% protection. For example, pneumococcal immunization is routinely used, and its efficacy is generally believed to be between 60 and 70% at best. A similar degree of efficacy is the case with influenza immunization. Clearly, vaccines that provide a percentage of protection similar to that demonstrated for the present vaccine are considered to have clinical value. It is submitted that the data in the second Cross declaration are in line with that for vaccines generally, and are sufficient to rebut any allegation with respect to the enablement or obviousness of the present invention. This point also was discussed at the interview and accepted.

In an earlier declaration, submitted on June 19, 1998, Dr. Cross provided other evidence probative of the issues in this case. The examiner's attention again is directed to experiments described in paragraphs 2-5 of this declaration. The experiments examined the efficacy of active immunization with four different vaccines. A first group of mice was immunized only with *N. meningitidis* OMP, a second with *Brucella* LPS complexed to *N. meningitidis* OMP, a third with J5 LPS complexed to OMP, and a fourth with EC018 LPS complexed to OMP. Vaccination with J5-OMP leads to 90% survival, 50% greater protection than vaccination with EC018-OMP, a complex of OMP with another strain of *E. coli*. This is particularly surprising in view of the fact that J5-OMP vaccine was providing protection against a heterologous strain (EC018) whereas EC018-OMP was providing protection against the same strain. The results reported in the Cross declaration could not have been predicted based on Zollinger, which teaches that all capsular polysaccharides and lipopolysaccharides behave equivalently in combination with an outer membrane protein for the purpose of solubilization as disclosed in Zollinger. They conclusively rebut the examiner's allegation that "Ziegler's purified *E. coli* J5 LPS would be expected to function no differently than Zollinger's generic *E. coli* LPS when complexed with meningococcal outer membrane protein."

Summary

From a reading of the Official Actions in this case, one would fairly expect that an effective endotoxin vaccine must have been approved long ago. This is especially so when one considers that nearly four hundred thousand cases of sepsis a year are documented, and sepsis is the leading cause of death in intensive care units. Clearly, there is a substantial commercial market, and the search for a vaccine to prevent or alleviate the severity of sepsis has been an initial and major area of biotechnology's involvement in clinical medicine.

Yet, nearly a quarter of a century after the first publications cited by Examiner Devi, there still is no vaccine to prevent or alleviate the severity of sepsis. This highlights a basic inconsistency between what a skilled artisan would glean from the literature that is cited against applicants' claims and the reality of endotoxin vaccines. In the present case, the picking and choosing of pieces from various studies has led to an inaccurate conclusion regarding what would have been obvious in the field of endotoxin vaccines. The fact remains that no cited paper or any reasonable combination of cited papers provides the insight critical to a successful vaccine against sepsis, as presently claimed. The references lack the teaching necessary to produce a clinically useful vaccine.

In view of the foregoing amendments and remarks, it is believed that all claims are in condition for allowance. Reconsideration of all rejections and a notice of allowance are respectfully requested. Should there be any questions regarding this application, the examiner is invited to contact the undersigned attorney at the phone number listed below.

Respectfully submitted,

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